

REIMBURSEMENT AGREEMENT
[Lake Park Boulevard in Highbury Commons
Intersection with 5600 West – Signal Improvements]

THIS REIMBURSEMENT AGREEMENT is made this ____ day of December, 2007, by and between WEST VALLEY CITY, a municipal corporation of the State of Utah (the “City”), and ZIONS SECURITIES CORPORATION, a Utah corporation (“Developer”) in contemplation of the following facts and circumstances:

A. Developer is the owner or is under contract to become the owner of certain real property located between 2400 South and 3100 South, and 4600 West and 5600 West, West Valley City, Utah, which is more particularly depicted on Exhibit A, attached hereto and incorporated herein by reference (the “Highbury Property”). As market conditions dictate, Developer intends to develop the Highbury Property for uses consistent with the City’s master plan and as may be proposed by Developer and approved by the City (the “Development”).

B. Overall plans for the Development are not final and will only be adopted by Developer as it becomes necessary based upon the proposed purchasers and/or tenants of the Development and the intended use of the land within the Development.

C. Construction of improvements for the Development will include the extension of existing Lake Park Boulevard as a major arterial roadway from its current terminus at its intersection with Corporate Park Drive to and including its intersection with 5600 West.

D. Improvements for Lake Park Boulevard shall include a traffic signal and related improvements at the intersection of Lake Park Boulevard and 5600 West, including related pedestals, poles, arms, displays, wires, cables, cabinets, controllers, pedestrian crossing lights, sidewalks, ramps, and other equipment, facilities, and improvements typically associated with traffic signals (collectively, the “5600 West Signal Improvements”).

E. The City has reviewed anticipated traffic requirements in the area of the Development and determined that the 5600 West Signal Improvements would constitute major and important additions to the City’s major roadway system, which will improve traffic flow and control and be a benefit generally to the City and its citizens.

F. The City acknowledges that the scope of the 5600 West Signal Improvements is in excess of that required to provide adequately managed access to the Development.

G. Developer is willing to plan the Development to permit the 5600 West Signal Improvements to be constructed and installed to facilitate, enhance and improve the traffic flow within the City, and to undertake responsibility for the design, construction, and installation of the 5600 West Signal Improvements, subject, however, to the City’s agreement to reimburse

Developer for that portion of costs and expenses which shall be incurred to construct the 5600 West Signal Improvements as a part of a major arterial roadway in accordance with standards required by the City.

H. Developer has agreed to pay the costs and expenses which Developer would have incurred to construct and install the 5600 West Signal Improvements to the standards required by applicable state and local laws and regulations for the Development (the “Required Improvements,” as further defined below), and the City has agreed to pay the cost and expenses of upgrades to the Required Improvements to allow them to qualify as part of a major arterial roadway and integral parts of the City’s major roadway system (the “City Improvements,” as further defined below), to the extent that the cost to construct and install the City Improvements exceeds the cost to construct and install the Required Improvements.

I. In reliance upon the City’s agreement to reimburse Developer as set forth in this Agreement, Developer has elected to proceed with the design, construction, and installation of the 5600 West Signal Improvements in order to facilitate the development of that portion of the Development located adjacent to the intersection of Lake Park Boulevard and 5600 West.

J. The parties desire to enter into an agreement to implement their agreements regarding the construction and installation of the 5600 West Signal Improvements and the allocation and payment of costs and expenses incurred in such construction and installation.

NOW, THEREFORE, for and in consideration of the mutual covenants made herein, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to facilitate the construction and installation of the 5600 West Signal Improvements. This Agreement sets forth the parties’ understandings and agreements with respect to the scope, design, management and costs of the “Project,” as defined below.

2. **Definitions.** As used in this Agreement, the following words and terms, unless the context otherwise requires, shall have the respective meanings provided below:

- a. “City Improvements” shall mean the 5600 West Signal Improvements which are not “Required Improvements” or “Zions Improvements.”
- b. “Contract Documents” shall mean the documents signed by Developer which form the contract with the “Contractor” responsible for the construction and installation of the 5600 West Signal Improvements, and include the construction and installation contract, “Plans and Specifications,” bid schedules, and other documents which govern the actual construction and installation of the 5600 West Signal Improvements.
- c. “Contractor” shall mean the party selected by Developer for the completion of the work set forth in the Contract Documents.

- d. “Developer Costs” shall mean the costs and expenses incurred to design, construct, and install those portions of the 5600 West Signal Improvements included within the Contract Documents which are “Developer Improvements.”
- e. “Developer Improvements” shall mean those portions of the 5600 West Signal Improvements which are the Required Improvements and Zions Improvements.
- f. “Plans and Specifications” shall mean the plans and specifications for the design, construction, and installation of the 5600 West Signal Improvements, prepared in accordance with standards of the Utah Chapter of the APWA, which were approved by the parties prior to the execution of this Agreement in accordance with the provisions of this Agreement, and are included as part of the Contract Documents.
- g. “Project” shall mean the complete scope of work performed or to be performed as described in this Agreement for the construction and installation of the 5600 West Signal Improvements in accordance with Plans and Specifications and the Contract Documents approved by the parties.
- h. “Project Costs” shall mean the total of “Reimbursable Costs” and Developer Costs and, therefore, the total costs and expenses to be incurred in the construction and installation of the 5600 West Signal Improvements.
- i. “Reimbursable Costs” shall mean the costs and expenses incurred to design, construct, and install those 5600 West Signal Improvements included within the Contract Documents which are City Improvements.
- j. “Required Improvements” shall mean the portion of the 5600 West Signal Improvements necessary for the use and occupancy of the Development as lawfully required by the City pursuant to the West Valley City Code and applicable state and federal law, and as a lawful condition precedent for approval to commence construction of improvements in that portion of the Development to be serviced by the 5600 West Signal Improvements.
- k. “Zions Improvements” shall mean the 5600 West Signal Improvements which are not Required Improvements or City Improvements, and which may have been included in the Plans and Specifications by Developer to enhance the Development, which may include, by way of illustration and not of limitation, decorative pedestals, decorative poles, and/or or enhanced landscaping.

3. **Term of Agreement.** This Agreement shall commence upon execution by the parties and shall continue until completion of the Project and the reimbursement to Developer of the Reimbursable Costs. Completion of the Project shall mean that the work performed by the Contractor pursuant to the Contract Documents has been completed and inspected and accepted by the City, and final payment has been made to the Contractor.

4. **Project Management.** Developer shall be solely responsible for the management of the Project; provided, however, that the Project shall remain subject to procedures of the City for review, inspection and approval normally applicable to traffic signalization projects. Unless otherwise notified in writing by Developer, Developer's authorized representative for the Project shall be Terry Roylance, and the City shall be entitled to rely upon instructions given or documents signed by said party. Unless otherwise notified in writing by the City, the City's authorized representative for the Project shall be Dan Johnson, City Engineer, and Developer shall be entitled to rely upon instructions given or documents signed by said party. The City and Developer each may change its respective authorized representative by five (5) days' prior written notice to the other party.

5. **Design - Plans and Specifications.** Developer has caused the Plans and Specifications for the 5600 West Signal Improvements to be completed. Developer shall be responsible for the payment of all costs and expenses incurred in the design of the 5600 West Signal Improvements, provided, however, that the City shall be responsible to reimburse Developer, as Reimbursable Costs, for costs and expenses incurred in the design of the City Improvements. The parties hereby acknowledge their acceptance and approval of the Plans and Specifications, which have been prepared to meet engineering standards of the City uniformly applied to similar signal improvements at similar intersections within the City, and the City further acknowledges that its approval of the Plans and Specifications has been granted in accordance with procedures uniformly applied to traffic signalization projects within the City. Any amendments to the Plans and Specifications (each, a "Change Order") must be approved, in advance and in writing, by both Developer and the City. The City hereby agrees that it shall not object to Change Orders to incorporate such enhancements to the Project as Developer may request, provided, however, that such enhancements shall be deemed to be Zions Improvements.

6. **Designation of Improvements.** Developer and the City have agreed on those portions of the 5600 West Signal Improvements which are included in Required Improvements, City Improvements and Zions Improvements, respectively. The Contract Documents have been prepared to provide sufficient detail to permit the computation of costs and expenses related to the construction of the 5600 West Signal Improvements.

7. **Contract Documents.** Developer has been and shall be solely responsible for the preparation and execution of the Contract Documents.

8. **Construction Costs.** The City shall be solely responsible for the payment of all Reimbursable Costs, and Developer shall be solely responsible for the payment of all Developer Costs. Each party shall be responsible to make arrangements for the payment of its respective portion of Project Costs. Developer has paid and shall pay all costs and expenses, including Reimbursable Costs, as same have or shall become due in accordance with the provisions of the Contract Documents. The City acknowledges, however, that Developer has undertaken obligations under the Contract Documents in reliance on the City's obligation to pay the Reimbursable Costs. The City shall become responsible for payment of the Reimbursable Costs only upon completion of the actual construction of the 5600 West Signal Improvements. Payment of Reimbursable Costs shall be made in accordance with Section 10 below.

9. **Final Reimbursable Costs Schedule; Allocation.** A final schedule setting forth the Reimbursable Costs relating to the 5600 West Signal Improvements is attached hereto and incorporated herein by reference as Exhibit B (the “Final Reimbursable Costs Schedule”). It is expressly agreed that the Final Reimbursable Costs Schedule constitutes the final determination of Reimbursable Costs for the construction of the 5600 West Signal Improvements, subject to approved Change Orders. To the extent that Change Orders are approved following execution of this Agreement and approval thereby of the Final Reimbursable Costs Schedule, the parties hereby agree that the City shall be responsible for the payment of all Change Orders which increase the cost of the City Improvements, and Developer shall be responsible for the payment of all Change Orders which increase the cost of the Developer Improvements.

10. **Payments.** Developer has processed and shall continue to process all invoices and make all payments to the Contractor and subcontractors in accordance with the terms of the Contract Documents. So long as payments are for work done in accordance with the Plans and Specifications, and the City’s responsibility for such payment does not exceed the Reimbursable Costs set forth on the Final Reimbursable Costs Schedule, Developer may process all invoices and make payments without submitting such invoices to the City for prior approval of payment. Following such payment, Developer may submit to the City a written request for reimbursement of the applicable Reimbursable Costs, together with satisfactory evidence of Developer’s original payment therefor (each, a “Reimbursement Request”). The City shall pay in full any such Reimbursement Request not later than thirty (30) days after the City’s receipt thereof; provided, however, that if the City shall reasonably object to any matters set forth in the Reimbursement Request, within fifteen (15) days of receipt thereof the City shall provide to Developer written notice of its objection(s), setting forth with specificity its objection(s) and the manner in which Developer may cure such objection(s) (the “Objection Notice”). Thereafter, Developer may, in its sole and absolute discretion, elect to either (i) cure said objection(s) and submit to the City an amended Reimbursement Request, together with evidence of its cure of the City’s prior objection(s), which request shall be paid by the City as set forth above, or (ii) do nothing, in which event the City shall have no obligation to pay said Reimbursement Request. Reimbursable Costs shall be paid from funds which have been designated and approved by the City, prior to the commencement of construction, for payment of costs and expenses incurred in the completion of the Project. The City’s obligation to pay Reimbursable Costs shall not be related or subject to the availability of road or other impact fees.

11. **Inspections.** The City shall be responsible for the inspection and approval of the 5600 West Signal Improvements in accordance with standard City inspection procedures.

12. **Ownership of Signal.** Developer acknowledges and agrees that as a condition of the Development of the Highbury Property, upon completion of construction, the 5600 West Signal Improvements shall be owned and maintained by the City; provided, however, that Developer, or its successor in interest, shall be responsible for the maintenance of landscaping which may have been installed as part of the 5600 West Signal Improvements.

13. **No Joint Venture.** This Agreement does not create, and shall not be construed to create, a joint venture by the parties.

14. **Notices.** Any payment or notice required by this Agreement may be served by mailing such notice or payment to the following addresses:

If to the City: Dan Johnson, P.E., City Engineer
West Valley City Public Works Department
3600 Constitution Boulevard
West Valley City, Utah 84119

If to Developer: Zions Securities Corporation
5 Triad Center, Suite 450
Salt Lake City, UT 84180
Attn: P. David Jensen
Fax: (801) 320-4626

With a Copy to: Kirton & McConkie
60 East South Temple, Suite 1800
Salt Lake City, UT 84111
Attn: Read R. Hellewell, Esq.
Fax No. (801) 321-4893

15. **Utah Law.** This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

16. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

17. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the 5600 West Signal Improvements, and no statement, promise, or inducement relating to said improvements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid. This Agreement may not be enlarged, modified, or altered, except in writing signed by both parties.

18. **Default.** If either party shall default in the performance of its obligations under this Agreement, the non-defaulting party may bring an action in a court of competent jurisdiction to recover any damages caused by the default of the other party, including reasonable attorney's fees. The non-defaulting party's rights shall include the right to specific performance.

19. **Indemnification.** Each party is responsible and liable for the wrongful or negligent acts which are committed by each respective party or by such party's agents, officials, contractors, or employees. Developer acknowledges that the City is a governmental entity under the "Governmental Immunity Act of Utah," Utah Code Annotated §63-30d-101, *et seq.* (the "Act"), and that the City does not waive any defenses otherwise available under said Act, nor does the City waive any limits of liability currently provided by said Act. Developer hereby agrees to defend, indemnify, save and hold harmless the City, including its elected and appointed

officials and employees, from and against any and all demands, liabilities, claims, damages, actions or proceedings, in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from any aspect of the construction of the 5600 West Signal Improvements, except where such demands, claims, actions or proceedings may result from the negligence or misconduct of the City, its elected or appointed officials, employees or agents.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY: WEST VALLEY CITY

Dennis J. Nordfelt, Mayor

ATTEST:

Sheri McKendrick, City Recorder

DEVELOPER: ZIONS SECURITIES CORPORATION,
a Utah corporation

By: _____
P. David Jensen
Its: Senior Vice President & COO

Exhibit A
to
Reimbursement Agreement
[Lake Park Boulevard in Highbury Commons
Intersection with 5600 West – Signal Improvements]

(Site Plan for Highbury Property)

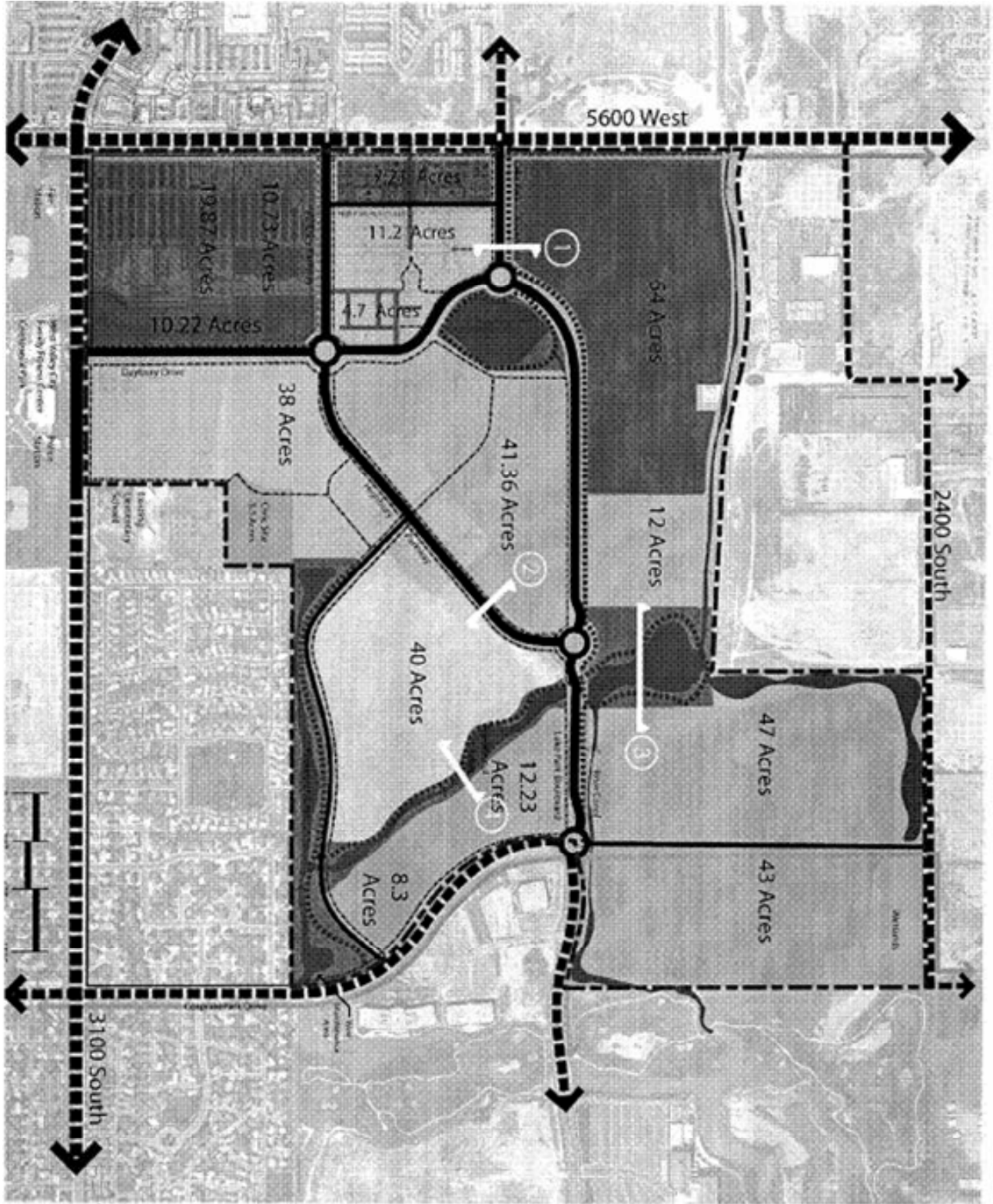


Exhibit B
to
Reimbursement Agreement
[Lake Park Boulevard in Highbury Commons
Intersection with 5600 West – Signal Improvements]

(Final Reimbursable Costs Schedule)

PROJECT: 5600 West Signal Improvements
REIMBURSABLE COSTS
October 5, 2007

Item #	Description	Quantity	*Unit Price (\$)	Total Price (\$)
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REIMBURSABLE DESIGN COSTS (50%)

(A-TRANS ENGINEERING)

1	Bid Review and Meeting	4	\$105.00	\$420.00
2	3 Site Visists	6	\$105.00	\$630.00
3	Meeting with UDOT and Field Mods	6	\$105.00	\$630.00
4	Document Review	2	\$105.00	\$210.00
5	Fill Install Review	3	\$105.00	\$315.00
6	Mileage	150	\$0.49	\$72.75

Subtotal *\$2,278.00*

Reimbursable Subtotal (50%) **\$1,139.00**

REIMBURSABLE CONSTRUCTION AND INSTALLATION COSTS (50%)

(HIDDEN PEAK ELECTRIC CO., INC.)

7	Intersection Improvements	1	\$148,000.00	\$198,000.00
8	Additional Work/Credit for 2 ADA ramps	1	\$27,368.01	\$27,368.01

Subtotal *\$225,368.01*

Reimbursable Subtotal (50%) **\$112,684.00**

Grand Total of All Items **\$227,646.01**

Grand Total Reimbursable Costs **\$113,823.01**